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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on November 7, 2003, at the Sheraton Fisherman's Wharf, Presidio III Room, 2500 Mason Street, San Francisco, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 9:09 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Alan J. Skobin	Howard Weinberg
	Glenn E. Stevens	General Counsel
	David W. Wilson	Robin Parker
		Senior Staff Counsel

Absent: David C. Lizárraga
Angelo Quaranta

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 18, 2003, GENERAL MEETING**

Mr. Flesh moved to adopt the September 18, 2003, General Board meeting minutes. Mr. Branzuela seconded the motion. The motion carried unanimously.

4. **DISCUSSION WITH SKIP DAUM, EXECUTIVE DIRECTOR, CALIFORNIA RECREATION VEHICLE DEALERS ASSOCIATION, AND A REPRESENTATIVE FROM THE RECREATION VEHICLE INDUSTRY ASSOCIATION, CONCERNING THE IMPLEMENTATION OF SENATE BILL 248 THAT WOULD EXTEND THE BOARD'S JURISDICTION TO INCLUDE RECREATIONAL VEHICLE DEALERS AND MANUFACTURERS - BOARD DEVELOPMENT COMMITTEE**

Skip Daum, Executive Director, of the California Recreation Vehicle Dealers Association provided the members with a brief overview of the recreational vehicle industry in California. Jim Shields, President of the California Recreation Vehicle Dealers Association, was introduced to the members and available for questions. Ralph Simoni, industry representative, Recreation Vehicle Industry Association ("RVIA"), provided the members

with a detailed overview of the RVIA and highlighted the differences between vehicles and recreational vehicles. The Board and the speakers will work towards cooperative educational programs for the members and industry.

17. **DISCUSSION CONCERNING PROGRAMMATIC AND REGULATORY CHANGES IN LIGHT OF RECENT LEGISLATION THAT PLACES THE RECREATIONAL VEHICLE INDUSTRY WITHIN THE BOARD'S JURISDICTION (SENATE BILL 248, CHAPTERED OCTOBER 9, 2003) - POLICY AND PROCEDURE COMMITTEE**

This matter was taken out of order.

The members were provided with a memorandum from Tom Novi and Robin Parker concerning programmatic and regulatory changes in light of the legislation that places the recreational vehicle industry within the Board's jurisdiction. Ms. Parker reported that the staff has compiled a list of the necessary changes, has begun to implement many of those changes, and will report back to the Board at the January 2004 meeting.

5. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Consumer Mediation Program. Mr. Novi reported that nearly 40% of the formal mediation complaints are resolved to the satisfaction of the consumer.

6. **SEMI-ANNUAL UPDATE ON STAFF TRAINING PROGRAMS IMPLEMENTED FOR SUPPORT PERSONNEL, STAFF COUNSEL, AND ADMINISTRATIVE LAW JUDGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel updating the staff training programs implemented for support personnel, staff counsel, and administrative law judges. Mr. Novi reported that a one-to-two day training seminar was being planned for the Administrative Law Judges.

7. **REPORT ON THE BOARD'S EFFORTS TO DISSEMINATE THE IN-SITE VIA E-MAIL - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel on the Board's efforts to disseminate the In-Site via e-mail. Mr. Novi reported that the Department of Motor Vehicles has offered to assist the Board in this regard and that subscriptions to the In-Site will be available on the Board's web site in the future.

8. **CONSIDERATION OF RECLASSIFICATION OF NEW MOTOR VEHICLE BOARD HEARING OFFICER I AND HEARING OFFICER II POSITIONS TO ADMINISTRATIVE LAW JUDGE - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning a proposal to reclassify the Board Hearing Officer I and II positions to

Administrative Law Judge. Mr. Novi reported that this change would eliminate an obsolete title and not result in any monetary changes. Mr. Skobin moved to adopt the Committee's recommendation to reclassify the Hearing Officer I and II positions to Administrative Law Judge. Mr. Wilson seconded the motion. The motion carried unanimously.

9. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Tom Novi and Kathy Tomono reporting on the Board Development Program. Mr. Novi highlighted the planned schedule of Board meetings and educational presentations for 2004. Mr. Novi pointed out that the educational presentations now include the recreational vehicle industry.

10. **CONSIDERATION OF ADDITIONAL OUT-OF-STATE TRIP TO THE RECREATION VEHICLE INDUSTRY ASSOCIATION NATIONAL RV TRADE SHOW FOR FISCAL YEAR 2003-2004 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning an additional out-of-state trip to the RVIA National RV Trade Show in December 2003. Mr. Novi reported that one out-of-state trip remained in the budget. Furthermore, in an effort to accommodate the recreational vehicle industry, Mr. Novi reported that the staff will request six (6) out-of-state trips next fiscal year. Mr. Skobin moved to allow two people, one staff person and one Board member, to attend the RVIA show at the discretion of the Board President. Mr. Flesh amended the motion to allow two staff people if no Board members attend. Mr. Wilson seconded the motion. The motion carried unanimously. Mr. Novi informed the members that in order for a second individual to attend, the Board would need to borrow an out-of-state trip from DMV.

11. **CONSIDERATION OF WHETHER ALL-TERRAIN VEHICLES AS DEFINED IN VEHICLE CODE SECTION 111 FALL WITHIN THE JURISDICTION OF THE BOARD FOR PURPOSES OF FEE COLLECTION AND CASE MANAGEMENT - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning whether all-terrain vehicles fall within the jurisdiction of the Board for purposes of fee collection and case management. John Paliwoda, Executive Director, California Motorcycle Dealers Association, requested that the Board continue this matter until its December meeting so that he could have an opportunity to comment. This matter was postponed until the December 11, 2003, Special meeting, and Mr. Paliwoda will be invited to present comments.

12. **DISCUSSION CONCERNING THE BOARD'S PRACTICES WITH REGARDS TO ISSUING PROTECTIVE ORDERS, SEALING RECORDS IN HEARINGS, AND PRIVACY INTERESTS FOR BUSINESS ENTITIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg

concerning the Board's practices with regards to issuing protective orders and sealing records in hearings, in addition to privacy interests for business entities. At the September 18, 2003, General meeting, Mr. Skobin requested that Mr. Weinberg research the issue of privacy interests for business entities. Mr. Weinberg reported that there are several narrow privacy interests for business. (During a portion of this discussion, Mr. Wilson, Vice President, took over during President Stevens' brief absence).

13. **DISCUSSION CONCERNING THE IMPACT OF THE DECISION IN *PHILLIPS MAZDA* (2003) 110 CAL.APP.4TH 1451 ON THE PROCESSING OF PETITIONS, THE BOARD'S REGULATIONS, THE BOARD'S PUBLICATIONS, AND PLANNED INDUSTRY EDUCATION - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the impact of the decision in *Phillips Mazda* on the processing of petitions, the Board's regulations and publications, and planned industry education. Ms. Parker reported that shortly after this meeting a public mailing would be disseminated in an effort to educate the Board's constituency. (During a portion of this discussion, Mr. Stevens returned to preside over the remainder of the meeting).

14. **CONSIDERATION OF PROPOSED NON-SUBSTANTIVE AMENDMENTS TO REGULATIONS THAT CHANGE REFERENCES TO "EXECUTIVE DIRECTOR" FROM "SECRETARY" AND TO "ADMINISTRATIVE LAW JUDGE" FROM "HEARING OFFICER" TO REFLECT THE CURRENT ORGANIZATIONAL STRUCTURE AND DUTIES OF THE BOARD STAFF AND ADMINISTRATION (13 CCR §§ 551.14, 551.15, 551.16, 551.17, AND 565) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning proposed nonsubstantive regulatory changes that reflect the current organizational structure. The vote on this matter was temporarily postponed due to a lack of quorum.

15. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATIONS THAT DELETES THE REFERENCE TO SECRETARY AS BEING AUTHORIZED TO CONDUCT HEARINGS IN PROTESTS (13 CCR § 590) - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed due to a lack of quorum.

16. **CONSIDERATION OF PROPOSED NON-SUBSTANTIVE AMENDMENTS TO REGULATIONS THAT REFERENCE THE NEW CLASS OF PROTESTS INVOLVING RECREATIONAL VEHICLE DEALERS AND MANUFACTURERS/DISTRIBUTORS (13 CCR §§ 585, 586, 587, 590, 593.1, AND 598) - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed due to a lack of quorum.

18. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation of general interest.
 - (1) Senate Bill 584 (Senator Alarcon)
- b. Legislation that impacts the Board.
 - (1) Senate Bill 248 (Senator Murray) [Chaptered October 9, 2003]
 - (2) Assembly Bill 1718 (Committee on Transportation) [Chaptered September 22, 2003]
- c. Legislation of general interest.
 - (1) Senate Bill 114 (Senator Torlakson) [Chaptered October 11, 2003]
 - (2) Senate Bill 146 (Senator Escutia) [Chaptered September 29, 2003]
 - (3) Senate Bill 237 (Senator Florez) [Chaptered August 1, 2003]
 - (4) Senate Bill 508 (Senator Escutia) [Chaptered July 14, 2003]
 - (5) Assembly Bill 309 (Assembly Member Chu) [Chaptered September 8, 2003]
 - (6) Assembly Bill 964 (Assembly Member Frommer) [Chaptered July 7, 2003]

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation of general interest, legislation that impacts the Board, and legislation of general interest. The summary analyzes the current law, the legislation, and the impact on the Board.

19. **SELECTION OF BOARD MEETING DATES FOR 2004**

This matter was postponed pending Mr. Branzuela's return.

20. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a report on Administrative Matters, which identified all pending projects, the Board manager and committee assigned, estimated completion dates, and status. Mr. Novi noted that a number of projects had been completed. However, he reported that there were contractual and fiscal difficulties with the credit card project that was causing delays.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker indicated that the two remaining licensee versus licensee petitions that were

sent Orders to Show Cause as a result of the September 18, 2003, General meeting, were dismissed at the Petitioner's request (Soutar's Nissan v. Nissan North America, Inc., Petition No. P-447-02, and Pioneer Centres of San Diego, Inc. v. Land Rover North America, Inc., Petition No. P-448-02).

Mr. Weinberg reported that the Board was not participating via the Attorney General's Office in any of the three pending petitions for writ of administrative mandate because there were no important state interests implicated.

14. **CONSIDERATION OF PROPOSED NON-SUBSTANTIVE AMENDMENTS TO REGULATIONS THAT CHANGE REFERENCES TO "EXECUTIVE DIRECTOR" FROM "SECRETARY" AND TO "ADMINISTRATIVE LAW JUDGE" FROM "HEARING OFFICER" TO REFLECT THE CURRENT ORGANIZATIONAL STRUCTURE AND DUTIES OF THE BOARD STAFF AND ADMINISTRATION (13 CCR §§ 551.14, 551.15, 551.16, 551.17, AND 565) - POLICY AND PROCEDURE COMMITTEE**

With the return of the quorum, the members voted on this matter. Mr. Flesh moved to adopted the proposed nonsubstantive regulations. Mr. Skobin seconded the motion. The motion carried unanimously.

15. **CONSIDERATION OF PROPOSED AMENDMENT TO REGULATIONS THAT DELETES THE REFERENCE TO SECRETARY AS BEING AUTHORIZED TO CONDUCT HEARINGS IN PROTESTS (13 CCR § 590) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning a proposed amendment to the regulations that deletes the reference to secretary as being authorized to conduct hearings in protests. Mr. Weinberg reported that the proposed amendment was consistent with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency. Mr. Wilson moved to adopt the proposed regulation. Mr. Flesh seconded the motion. The motion carried unanimously.

16. **CONSIDERATION OF PROPOSED NON-SUBSTANTIVE AMENDMENTS TO REGULATIONS THAT REFERENCE THE NEW CLASS OF PROTESTS INVOLVING RECREATIONAL VEHICLE DEALERS AND MANUFACTURERS/DISTRIBUTORS (13 CCR §§ 585, 586, 587, 590, 593.1, AND 598) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning proposed amendments to the regulations that reference the new class of protests involving recreational vehicle dealers and manufacturers. Mr. Wilson moved to adopt the proposed regulation. Mr. Skobin seconded the motion. The motion carried unanimously.

19. **SELECTION OF BOARD MEETING DATES FOR 2004**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Stevens went on the record to announce the following schedule:

- January 22, 2004, Orange County – General meeting
- March 9, 2004, Sacramento – General meeting and CMCD A Dealer Day
- April 21, 2004, Indian Wells – Special meeting (3rd Annual Industry Roundtable) and CMCD A State Convention
- April 22, 2004, Indian Wells – General meeting and CMCD A State Convention
- June 10, 2004, Sacramento – General meeting
- June 10, 2004, Sacramento – Special Meeting to tour a recreational vehicle dealership
- September 30, 2004, Ontario – General meeting (A Special Meeting to tour a recreational vehicle manufacturer may also be scheduled)
- November 4, 2004, San Francisco – General meeting
- December 16, 2004, Sacramento – Special meeting

21. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

Consideration of annual performance review for Executive Director - Executive Committee.

The members of the Board convened in closed Executive Session to discuss agenda item 21.

22. **OPEN SESSION**

The members returned to open session. Mr. Stevens announced that he would work with the DMV Director on the matters discussed in closed Executive Session and report back at the December 11, 2003, Special meeting.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:53 a.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Glenn E. Stevens
President
New Motor Vehicle Board